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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

- and -

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | Affects PG&E Corporation |
| <input type="checkbox"/> | Affects Pacific Gas and
Electric Company |
| <input checked="" type="checkbox"/> | Affects both Debtors |

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

Date: August 14, 2019
Time: 9:30 a.m.
Ctrm: 17
Judge: Dennis Montali

**RESPONSE OF THE CALIFORNIA STATE AGENCIES TO DEBTORS' MOTION
PURSUANT TO 11 U.S.C. §§ 105(a) AND 502(c) FOR THE ESTABLISHMENT OF
WILDFIRE CLAIMS ESTIMATION PROCEDURES [DOCKET NO. 3091]**

1 The California Department of Forestry and Fire Protection (“CAL FIRE”), California
2 Department of Toxic Substances Control (“DTSC”), California Governor’s Office of Emergency
3 Services (“Cal OES”), California Department of Veterans Affairs (“CalVet”), California State
4 University (“Cal State University”), and California Department of Parks and Recreation (“State
5 Parks”) (collectively, the “California State Agencies”) hereby file this response to the Debtors’
6 motion to establish procedures for the estimation of Wildfire Claims¹ (the “Estimation Motion”)
7 [Docket No. 3019] based on the following:

8 INTRODUCTION

9 1. The California State Agencies appreciate the need for urgency to resolve the
10 Debtors’ bankruptcy proceedings pursuant to a chapter 11 plan by June 30, 2020, so that the
11 Debtors can participate in the Wildfire Fund created by the recently enacted legislation in A.B.
12 1054. However, any process for estimation of Wildfire Claims must be fair and equitable to all,
13 including any agencies of the state of California, to the extent any such agencies hold Wildfire
14 Claims that are “unliquidated” or “contingent” under section 502(c).

15 2. With respect to Phase 3 of the proposed estimation process, and as discussed in
16 more detail below, the California State Agencies filing this response believe they will not have
17 unliquidated or contingent Wildfire Claims within the meaning of section 502(c) of the
18 Bankruptcy Code. However, because the California State Agencies are still in the process of
19 preparing their claims, there is a chance that some state agency claims might fall within the
20 purview of section 502(c), and therefore, the California State Agencies file this response. In
21 addition, the California State Agencies do not know whether the Debtors or Committees will
22 contend that any Wildfire-related claims held by the state agencies are unliquidated or contingent
23 and subject to estimation. If so, the Court will need to determine whether such claims are
24 unliquidated or contingent. For these reasons, the California State Agencies (and any other state
25 agency that may be determined to hold an unliquidated or contingent Wildfire Claim) reserve the
26 right to participate in further court proceedings regarding the fair and proper procedures for Phase

27
28 ¹ Capitalized terms not otherwise defined shall have the same meaning as in the Estimation Motion.

1 3 of the estimation process.

2 3. The California State Agencies also reserve the right to brief the issues raised in
3 Phase 1 (inverse condemnation determination) and Phase 2 (Tubbs Fire liability). In addition,
4 CAL FIRE is concerned about the potential discovery burden on it, particularly with respect to
5 the determination of the Debtors' liability for the Tubbs Fire, but also with respect to the other
6 Wildfires. As set forth below, CAL FIRE requests the assistance of this Court to coordinate
7 discovery directed at CAL FIRE to minimize duplication, unnecessary expense, and undue
8 burden on CAL FIRE.

9 4. The California State Agencies share the Court's concerns and questions expressed
10 at the hearing on July 24, 2019, regarding the lack of clarity in the Debtors' Estimation Motion as
11 to the purpose and effect of the proposed estimation process. If the Debtors intend to use the
12 proposed estimation process to cap the ultimate distribution to Wildfire Claims under a chapter 11
13 plan, many issues arise, including but not limited to absolute priority rule issues. The California
14 State Agencies also submit that estimation should be focused on the tort victims' Wildfire Claims,
15 and not be used to limit state agency claims such as fire suppression, regulatory and police power,
16 and environmental remediation claims, as more specifically described below.² Thus, the
17 California State Agencies reserve the right to object, argue, and comment further once the
18 Debtors answer the Court's questions and/or in connection with confirmation of any chapter 11
19 plan.

20 **RESPONSE**

21 **A. Claims of California State Agencies Not Subject to Section 502(c) Estimation**

22 5. Bankruptcy Code section 502(c) permits the bankruptcy court to, among other
23 things, estimate "any contingent or unliquidated claim, the fixing or liquidation of which, as the
24 case may be, would unduly delay the administration of the case [.]". 11 U.S.C. § 502(c)(1).

25 6. Under Ninth Circuit authority, "whether a debt is liquidated turns on whether it is

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27 ² Indeed, when discussing the Wildfire Claims to be estimated, the Motion refers to the "[t]ens of
28 thousands of California residents whose lives have been affected by the Wildfires," "actual
damages suffered by the victims," and "compensating victims who deserve compensation."
Motion at pp. 1:7-8; 2:1; and 2:17-18.

1 subject to ‘ready determination and precision in computation of the amount due.’” *In re Fostvedt*,
2 823 F.2d 305, 306 (9th Cir. 1987) (referring to the term “liquidated” as used in section 109(e))
3 (citations omitted). That same definition has been used in the context of interpreting
4 “unliquidated” for section 502(c) purposes. *In re Audre, Inc.*, 202 B.R. 490 (Bankr. S.D. Cal.
5 1996).

6 7. “[A] contingent debt is ‘one which the debtor will be called upon to pay only upon
7 the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to
8 the alleged creditor.’” *Fostvedt*, 823 F.2d at 306 (citations omitted). “[A] debt is noncontingent
9 if all events giving rise to liability occurred prior to the filing of the bankruptcy petition.”
10 *Nicholes v. Johnny Appleseed (In re Nicholes)*, 184 B.R. 82, 88 (B.A.P. 9th Cir. 1995) (citing
11 *Fostvedt*). As the *Nicholes* court explained:

12 A tort claim ordinarily is not contingent as to liability; the events that gave rise to
13 liability to the tort claim usually have occurred and liability is not dependent on
14 some future event that may never happen. It is immaterial that the tort claim is not
adjudicated or liquidated, or that the claim is disputed, or indeed that it has any of
the many other characteristics of claims under the Code.

15 *Nicholes*, 184 B.R. at 88 n.7 (citation omitted). The *Nicholes* analysis has been applied with
16 respect to interpreting “contingent” for section 502(c) purposes. *Audre, Inc.*, 202 B.R. at 492.

17 8. While the California State Agencies are still in the process of determining claims,
18 most, if not all, of the California State Agencies’ respective claims are NOT contingent or
19 unliquidated and thus are NOT subject to estimation. Below is a brief description of the types of
20 Wildfire-related claims that the California State Agencies may have:³

21 a. CAL FIRE: Under California law, CAL FIRE is charged with “fire
22 protection, fire prevention . . . of the state’s forest, range, and brushland resources . . . associated
23 emergency services, and assistance in civil disasters and other nonfire emergencies” and
24 “[e]nforcing forest and fire laws” in California. Cal. Pub. Res. Code §§ 713, 714. CAL FIRE’s
25 fire protection responsibilities include regularly responding to fire emergencies throughout the

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27 ³ As noted, the California State Agencies reserve all rights with respect to the claims to be
28 asserted in their official proofs of claim, and the descriptions and statements herein shall not be
considered an admission or other limitation on the claims that may be asserted against the Debtors
or any other responsible parties with respect to the Wildfires.

1 state. CAL FIRE also bears responsibility for investigating the origin and cause of fires that
2 occur in its jurisdiction.

3 California Health and Safety Code sections 13009 and 13009.1 authorize CAL
4 FIRE to recover certain costs from persons who, negligently or in violation of the law, “set[] a
5 fire, allow[] a fire to be set, or allow[] a fire kindled or attended by him or her to escape onto any
6 public or private property.” Cal. Health & Safety Code §§ 13009, 13009.1. Recoverable costs
7 include costs incurred in fighting and suppressing the fire, costs of rescue and emergency medical
8 services, investigation costs, and accounting costs. *Id.* §§ 13009(a), 13009.1(a). The costs are
9 recoverable from the responsible party “in the same manner as . . . an obligation under a contract,
10 express or implied.” *Id.* §§ 13009(a), 13009.1(e).

11 CAL FIRE’s claims for cost recovery arising out of the Wildfires are liquidated
12 because they are both readily determinable and are precise computations of the amount due to
13 CAL FIRE. It is CAL FIRE’s practice to complete internal processes that precisely compute the
14 amount of CAL FIRE’s cost recovery claims with respect to each fire incident at issue. After a
15 fire has been suppressed, a CAL FIRE employee initiates the Activity Reporting Costs (“ARC”)
16 Summary for the fire, which is prepared using a CAL FIRE internal ARC software program. The
17 ARC software program imports qualifying, recoverable costs associated with the incident from
18 various accounting programs and processes at CAL FIRE, and once all appropriate costs have
19 been imported, CAL FIRE personnel begin a review and audit of the imported costs associated
20 with the fire. During this review, CAL FIRE personnel collect all finance documents related to
21 the incident, confirm those documents correspond to the charges in the ARC, and adjust the costs
22 claimed in the ARC to ensure compliance with CAL FIRE’s cost recovery policies. If a cost is
23 not clearly supported by back-up finance documents or not clearly incurred in relation to the
24 particular fire, CAL FIRE personnel make the cost “not billable,” manually writing it off of the
25 ARC. In this way, CAL FIRE personnel review and analyze each and every line item charged to
26 a specific fire.

27 Once finished, the ARC package, consisting of the ARC Summary, supporting
28 ARC Summary documents, and supporting finance documents, becomes CAL FIRE’s record of

1 recoverable costs related to a specific incident. A complete ARC package lays the foundation for
2 both the reasonableness and amount of CAL FIRE's costs, as required under CAL FIRE's cost
3 recovery statute, and California courts have held that CAL FIRE's ARC "conclusively
4 established" the amount CAL FIRE expended in recoverable fire suppression and investigation
5 activities. *People v. Southern Cal. Edison Co.*, 56 Cal. App. 3d 593, 602-607 (1976). And, the
6 costs described in CAL FIRE's ARCs are generally not subject to substantial revision because
7 defendants opposing CAL FIRE's cost recovery claims cannot make arguments of comparative
8 fault or mitigation of damages to reduce CAL FIRE's costs described in the ARC. *People ex rel.*
9 *Grijalva v. Superior Court*, 159 Cal. App. 4th 1072, 1077-78 (2008). Accordingly, CAL FIRE's
10 ARC-backed cost recovery claims are liquidated for the purposes of the Debtors' bankruptcy
11 proceedings.

12 b. CalVet: CalVet will assert claims for property damage as a result of the
13 Butte and Camp fires. These claims are liquidated and are not contingent because they are for
14 amounts already paid to veterans for their property losses or are for discrete property damage to
15 property owned by CalVet. These amounts are readily determinable in precise amounts based on
16 checks paid to the veterans or cost estimates of labor and materials to rebuild, repair, and clean up
17 the damaged property.

18 c. California State University: The Cal State University will assert claims for
19 property damage, economic loss, and emergency response costs arising out of the Tubbs fire and
20 Camp fire. These claims are likely liquidated and are not contingent because the amounts owed
21 have been determined in precise amounts based on amounts already expended.

22 d. Cal OES: Cal OES is responsible for the coordination of overall state
23 agency response to disasters, including wildfires and assisting local governments with recovery.
24 Cal OES acts as the "grantee" for federally funded disasters and as "grantor" for the California
25 Disaster Assistance Program. Cal OES ensures state and federal support are provided through
26 various state and local agencies' emergency services. Those services included debris removal,

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1 emergency protective measures,⁴ police patrols of evacuated areas, traffic control, repair of
2 damaged public property, and administration and coordination of emergency services. As part of
3 its mandate, Cal OES likely will assert direct and indirect reimbursement claims against the
4 Debtors for emergency services provided during the various Wildfires. These claims will be
5 based on amounts Cal OES expended. These amounts are expected to be liquidated and are not
6 contingent.

7 e. DTSC: DTSC has police and regulatory powers to enforce environmental
8 laws regarding, *inter alia*, contamination from the release or threatened release of hazardous
9 substances, including the releases of hazardous substances caused by the Debtors from the
10 Wildfires. Cal. Health & Safety Code §§ 25100, 25300. DTSC is one of the California state
11 agencies with authority over the cleanup of contaminated sites. DTSC incurred costs in
12 responding to the releases of hazardous substances from the Wildfires, including removing
13 hazardous substances from residences and other buildings damaged in a Wildfire. Similar to
14 CAL FIRE, DTSC's response costs are determinable and are therefore liquidated. DTSC
15 employs a detailed process to track costs and employee time for responding to cleanup of
16 hazardous substances at each site.

17 f. State Parks: State Parks has a contract claim against the Debtors for failure
18 to pay on a contract. The Debtors entered into a contract with State Parks for use of a state park
19 as a staging area for the Camp Fire. The Debtors issued a check, but cancelled it upon the filing
20 of the bankruptcy. In addition, State Parks will assert claims for economic loss, environmental
21

22 ⁴ The regulations promulgated pursuant to the California Disaster Assistance Act (Gov. Code
23 § 8680, et seq.) define "emergency protective measures" to include "search and rescue,
24 demolition of unsafe structures, warning of further risks and hazards, public information on health
25 and safety measures, and actions necessary to remove or to reduce immediate threats to public
26 property, or to private property when in the public interest, or temporary protective measures
27 designed to protect public or private property from further damage." Cal. Code Regs., tit. 19,
28 § 2930, subd. (b). "[T]emporary repairs to damaged buildings or structures," and "reimbursement
for the demolition of a damaged public facility," are two of several express examples of
emergency protective measures. Cal. Code Regs., tit. 19, § 2930, subds. (d)(2), (d)(4). The
regulations promulgated under the Robert T. Stafford Disaster Relief and Emergency Assistance
Act (42 U.S.C. § 5121 et seq.) define "emergency protective measures" as measures to "save
lives, to protect public health and safety, and to protect improved property... ." Code of Federal
Regs. tit. 44, § 206.225, subd. (a)(1).

1 work, and emergency response costs arising out of the Camp fire. Emergency response costs
2 include staff time expended in assisting in evacuation of residents as well as evacuation of
3 cultural resources. These claims are likely liquidated and are not contingent because the amounts
4 owed have been determined in precise amounts based on amounts already expended.

5 Consequently, the California State Agencies believe that their Wildfire-related claims, and
6 the claims of other state agencies that are related to the Wildfires, will not be unliquidated or
7 contingent, and thus should not be included as part of the estimation of Wildfire Claims as
8 proposed in the Debtors' Estimation Motion. However, it is not clear whether the Debtors'
9 Estimation Motion seeks to estimate these types of claims, which are certainly distinguishable
10 from individual tort victims' claims or subrogation claims of insurers. If the Debtors or the
11 Committees dispute these characterizations, the Court will need to determine (after the bar date)
12 whether particular filed claims related to the Wildfires are unliquidated or contingent.

13 In the event the respective claims held by the California State Agencies are ordered
14 subject to the Phase 3 estimation, the California State Agencies reserve their rights to:
15 (a) participate in further Court proceedings regarding the proper and fair procedures for Phase 3;
16 (b) request the appointment of an examiner or court expert under Federal Rule of Evidence 706 to
17 aid the Phase 3 estimation process; and (c) object to any cap placed on unsecured Wildfire-related
18 claims for distribution purposes if the cap results in not paying all valid claims in full.

19 **B. Anticipated Discovery Issues Related to CAL FIRE**

20 9. Regarding Phase 2 proposed by the Estimation Motion, the Debtors identify CAL
21 FIRE as a primary source of the evidence regarding liability for the Tubbs Fire. CAL FIRE
22 requests that the Debtor, the Committees, any other parties participating in Phase 2, and the Court
23 as necessary, coordinate the discovery procedures to minimize the burden on CAL FIRE. It is
24 already apparent that the numerous parties who have a stake in Phase 2 and Phase 3 are
25 aggressively seeking information from CAL FIRE or other governmental units that work with
26 CAL FIRE and are doing so in an uncoordinated, duplicative, and overly burdensome manner.
27 CAL FIRE requests the Court's assistance in ensuring a coordinated and efficient process that
28 does not impose an undue burden on CAL FIRE.

1 10. An example of a need for the Court’s assistance is the recent correspondence filed
2 with the Court from the Tort Claimants Committee (“TCC”) and others regarding discovery. On
3 July 26, 2019, the TCC submitted a letter to this Court [Docket No. 3219] that attached a letter
4 from the subrogation plaintiffs and the individual plaintiffs to the Debtors indicating that such
5 plaintiffs intended to take the following depositions: (a) eight CAL FIRE employees in relation
6 to the Tubbs Fire; (b) four CAL FIRE investigators in relation to the Atlas Fire; (c) the CAL
7 FIRE person(s) most knowledgeable with respect to the origin area and causation of the (i) Adobe
8 Fire, (ii) Norrbom Fire, (iii) Nuns Fire, (iv) Oakmont Fire, (v) Partrick Fire, and (vi) Pressley
9 Fire; (d) three CAL FIRE employees in relation to the Redwood/Potter Valley Fire; (e) two CAL
10 FIRE employees in relation to the Sulphur Fire; (f) CAL FIRE investigators in relation to the
11 Pocket Fire; and (g) all CAL FIRE employees charged with investigating and determining the
12 origin and cause of the (i) Point Fire, (ii) Highway 37 Fire, (iii) Cascade Fire, (iv) Cherokee Fire,
13 (v) LaPorte Fire, (vi) Lobo Fire, (vii) McCourtney Fire, and (viii) Camp Fire.

14 11. In addition to the depositions, the subrogation plaintiffs and the individual
15 plaintiffs seek all native CAL FIRE Lidar, photographs, and video with respect to the (a) Tubbs
16 Fire, (b) Atlas Fire, (c) Point Fire, (d) Highway 37 Fire, (e) Cascade Fire, (f) Cherokee Fire,
17 (g) LaPorte Fire, (h) Lobo Fire, (i) McCourtney Fire, and (j) Camp Fire.

18 12. Counsel for the SLF Fire Victim Claimants also filed a notice indicating that they
19 intend to serve a subpoena on CAL FIRE on August 9, 2019, seeking the complete unredacted
20 Tubbs Investigation Report, Case Number 17CALNU010045, including all unredacted
21 attachments. Dkt. No. 3218.

22 13. Last week, a CAL FIRE station in Butte County was served with an extremely
23 broad subpoena seeking numerous categories of documents and information relating to the 2018
24 Camp Fire, including documents and numerous forms of media from all first responders in the
25 first two days of the Camp Fire, all communications with PG&E personnel, and a series of
26 documents relating to the investigation of the cause of the Camp Fire. Dkt. No. 3341.

27 14. CAL FIRE reserves all rights to object to such discovery. CAL FIRE requests the
28 assistance of this Court to minimize duplicative, unnecessarily expensive, and burdensome

1 discovery aimed at CAL FIRE in this bankruptcy proceeding. As a suggestion, CAL FIRE
2 believes it would be appropriate for the Court to initially limit deposition discovery of any CAL
3 FIRE employees to one person per Wildfire to be identified by CAL FIRE and that any such
4 depositions be limited to one day of seven hours per Wildfire. This is consistent with Federal
5 Rule of Civil Procedure 30(b)(6) and (d)(1). If further depositions are necessary regarding a
6 particular fire, a showing of specific need can be made by the requesting party and considered by
7 the Court. With respect to written discovery, because CAL FIRE is in the position of a third party
8 and these proceedings must move quickly, any written discovery should be narrowly tailored and
9 focused on the key information required from CAL FIRE. Moreover, CAL FIRE must be
10 allowed to redact protected personal information (e.g., social security numbers, home addresses),
11 and such written discovery must provide for sufficient time for CAL FIRE to identify and
12 assemble responsive documents. Further, the Court likely will need to address issues that limit
13 discovery in light of the ongoing criminal investigations related to the Camp Fire.

14 **RESERVATION OF RIGHTS**

15 15. Neither this objection nor any subsequent appearance, pleading, proof of claim,
16 claim or suit is intended or shall be deemed or construed as:

17 a. a consent by the California State Agencies to the jurisdiction of this Court
18 or any other court with respect to proceedings, if any, commenced in any case against or
19 otherwise involving the California State Agencies;

20 b. a waiver of any right of the California State Agencies to (i) have an
21 Article III judge adjudicate in the first instance any case, proceeding, matter or controversy as to
22 which a Bankruptcy Judge may not enter a final order or judgment consistent with Article III of
23 the United States Constitution, (ii) have final orders in non-core matters entered only after de
24 novo review by a District Court Judge, (iii) trial by jury in any proceeding so triable in the
25 Chapter 11 Cases or in any case, controversy, or proceeding related to the Chapter 11 Cases,
26 (iv) have the United States District Court withdraw the reference in any matter subject to
27 mandatory or discretionary withdrawal, or (v) any and all rights, claims, actions, defenses, setoffs,
28 recoupments or remedies to which the California State Agencies are or may be entitled under

1 agreements, in law or in equity, all of which rights, claims, actions, defenses, setoffs and
2 recoupments are expressly reserved hereby; or

3 c. a waiver of any objections or defenses that the State of California, the
4 California State Agencies or any other agency, unit or entity of the State of California may have
5 to this Court's jurisdiction over the State of California, the California State Agencies or such
6 other agency, unit or entity based upon the Eleventh Amendment to the United States
7 Constitution or related principles of sovereign immunity or otherwise, all of which objections and
8 defenses are hereby reserved.

9 CONCLUSION

10 The California State Agencies reserve their rights to: (a) have the Court determine
11 whether their claims, and the Wildfire-related claims of other state agencies, are unliquidated or
12 contingent, if there is a dispute over the issue; (b) brief the issues raised in Phase 1 (inverse
13 condemnation determination) and Phase 2 (Tubbs Fire liability); (c) participate in further Court
14 proceedings regarding the proper and fair procedures for Phase 3; (d) request consideration of the
15 appointment of an examiner or court expert under Federal Rule of Evidence 706 to aid the
16 Phase 3 estimation process; and (e) object to any cap placed on unsecured Wildfire-related claims
17 for distribution purposes if the cap does not pay all valid claims in full.

18 If the Debtors intend the proposed estimation to be used to cap the ultimate distribution to
19 Wildfire Claims under a chapter 11 plan, many issues arise, including but not limited to absolute
20 priority rule issues. The California State Agencies reserve the right to object, argue and comment
21 further once the Debtors answer the Court's questions and/or in connection with confirmation of

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1 any chapter 11 plan.

2 In addition, CAL FIRE requests that the Court coordinate discovery aimed at CAL FIRE
3 to minimize duplication, unnecessary expense and burden on CAL FIRE.

4 Dated: August 7, 2019

Respectfully submitted,

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8 By: /s/ Paul J. Pascuzzi

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12 Emergency Services, California Department of Veterans
Affairs, California State University, and California
13 Department of Parks and Recreation

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I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 500 Capitol Mall, Suite 2250, Sacramento, CA 95814. On August 7, 2019, I served the within documents:

By Electronic Service only via CM/ECF.

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